

In The United States District Court
For The Western District of Pennsylvania

FILED

JUL 9 2009

Derrick Royter
Plaintiff

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

v.
United States Of America
Defendant

Civil No: 01:07cvadkina

Sean J. McLaughlin
United States District
Court Judge

Appeal motion to strike defendant's 2nd motion
For Summary Judgement Sub-judge

Now Comes Plaintiff above who Respectfully ASK
this Court to strike defendant's second bite of the
Apple motion For Summary Judgement for the following
Reasons.

I.J, The District Court Judge has already overruled
the U.s. Magistrate Judge Memorandum order in this
case and denied defendant's Request for Summary Judgment
in this Case at bar.

See, District Courts order denying defendant's
Summary Judgement in this Case

Exhibit A

2.) Defendants in this second attempt for Summary Judgement "Riges" no new issues for the district Court Judge did not already consider in the district Court first denial of Summary Judgement to the defendants in this case. Please "See" District Court Judge denial of defendants motion for summary judgement.

"Exhibit A"

3.) The U.S. Magistrate Judge is in error or will make a mistake in trying to over rule the District Court Judge denial of Summary Judgement to defendants in this case.

4.) The proper Vehicle for defendant, would have been for the defendants if they disagreed with the district Court Judge would have been for the defendants to file.

5.) A notice of Appeal From the 1st denial of Summary Judgement, not file A 2nd Summary Judgement to the U.S. Magistrate Judge to attempt to over rule the District Judge.

"See" Exhibit "A"

3.) Defendants, Argue No New argument, they simply restate what was denied by the district Court Judge in the 1st denial of Summary Judgment in this case which is an Abuse of the F. R. C. P. Rule 56 motion.

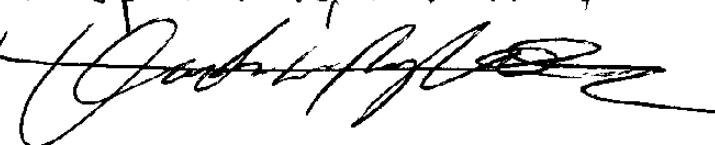
Wherefore Royster Pray the Court deny defendants second attempt to overrule the district Court Judge, When no Appeal by defendant, was taken to the 3rd Circuit Court of Appeals.

"See" Exhibit A

Royster ask this court to strike defendant's 2nd motion for Summary Judgment, denied by which was file on 7/17/2009

I declare under penalty of perjury All is true and correct.

Respectfully submitted

LSI 

Date: 7-26-09

Certificate Of Service

I, Derrick L. Royster here by attest and affirm
that a true and correct copy of the motion was
sent U.S. first class mail by presenting to
Correctional Officer at FCI Oliver for processing
to the U.S. Postal Service for delivery on
July 25, 2009 to

Michael C. Coliturri
Asst United States Attorney
160 Grant Street Suite 4800
Pittsburgh, PA. 15219

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DERRICK ROYSTER,)
)
)
Plaintiff,)
v.) Civil Action No. 07-228 Erie
)
THE UNITED STATES OF AMERICA,)
)
)
Defendant.)

MEMORANDUM ORDER

Plaintiff's civil rights complaint was received by the Clerk of Court on August 23, 2007 and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's Report and Recommendation [29], filed on December 2, 2008, recommends that the Defendant's motion [15] to dismiss or, in the alternative, motion for summary judgment, be granted. The parties were allowed ten (10) days from the date of service in which to file objections. Plaintiff's objections [30] were filed on December 11, 2008.

AND NOW, this 5th Day of January, 2009, upon de novo consideration of the Chief Magistrate Judge's Report and Recommendation [29] of December 2, 2008 as well as the objections filed thereto,

IT IS ORDERED that the Defendant's motion [15] to dismiss or, in the alternative, motion for summary judgment be, and hereby is, DENIED. Specifically, the Court finds that on the present record there is an issue of fact as to when the Defendant knew or reasonably should have known that the cause of the MRSA

infection was the removal of the laundry machines. See *Green v. United States*, 180 Fed. Appx. 310, 313, 2006 WL 839054, at **3 (3d Cir. March 31, 2006) ("[W]hen the fact of injury alone is insufficient to put an injured party on notice of its cause, the Supreme Court has indicated that the accrual of the claim is delayed until the injured party discovers that cause.") (citing *United States v. Kubrick*, 444 U.S. 111, 122 (1979)).

Accordingly, this Court declines to adopt the Chief Magistrate Judge's Report and Recommendation [29] dated December 2, 2008.

s/ SEAN J. McLAUGHLIN

Sean J. McLaughlin
United States District Judge

cm: All parties of record.
Chief U.S. Magistrate Judge Baxter

Bernell L. Royster
FCI Gilmer
P.O. Box 6000
Glenville, WV 26307

Clerk of the Court
United States District Court
P.O. Box 1820
Erie, PA. 16501

RE: Royster V. United States, 01:07-cv-228 Erie

Dear Clerk of the Court,

Please docket and file enclosed motion to
the District Court Judge in above captioned cause.
A copy of the same has been sent to opposing counsel
proof of service is enclosed.

Thank you for your assistance with this matter

Your truly

Bernell L. Royster